

The Honorable Benjamin Settle

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

CLYDE RAY SPENCER, MATTHEW  
RAY SPENCER, and KATHRYN E.  
TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING  
ATTORNEY FOR CLARK COUNTY  
JAMES M. PETERS, DETECTIVE  
SHARON KRAUSE, SERGEANT  
MICHAEL DAVIDSON, CLARK  
COUNTY PROSECUTOR'S OFFICE,  
CLARK COUNTY SHERIFF'S  
OFFICE, THE COUNTY OF CLARK  
and JOHN DOES ONE THROUGH  
TEN,

Defendants.

NO. C11-5424BHS

SUPPLEMENTAL DECLARATION  
OF JAMES M. PETERS IN SUPPORT  
OF DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

NOTED FOR FEBRUARY 8, 2013

I, James M. Peters, make the following declaration under penalty of perjury:

I am over the age of 18, competent to testify about the matters stated herein, and make this declaration based upon my personal knowledge.

As documented in correspondence between Arthur Curtis and the King County Prosecuting Attorney dated January 9, 1985, shortly after Mr. Curtis filed the original charges against Mr. Spencer, he arranged for a King County Deputy Prosecuting Attorney to be appointed special prosecuting attorney with trial and other responsibilities for the Spencer case. That person was DPA Barbara Linde. See Exhibits 6-9, 28-29 to Deposition of Arthur Curtis excerpted as Exhibit C to Declaration of Patricia C. Fetterly dated January 16, 2013.

1 Mr. Spencer was arraigned on January 4, 1985. Clark County DPA Mike Foister  
2 appeared on behalf of the state at that hearing. See Exhibit A hereto. An initial trial date of  
3 February 27, 1985 was set. See Exhibit B hereto.

4 Mr. Spencer was back in court on January 25, 1985 for an Omnibus hearing. I appeared  
5 on behalf of the state at that hearing and entered into an Omnibus Application and Agreed Order  
6 with James Rulli, attorney for Mr. Spencer, concerning discovery. Exhibit 1 to Declaration of  
7 James Peters dated May 10, 2012. (Dkt 69 at 13-16). This agreed order provided, *inter alia*, that  
8 each side would exchange the names and addresses of witnesses and their statements by 10 days  
9 before the trial date.  
10

11 Although a trial date had been originally set in this case for February 27, 1985 at the time  
12 of Mr. Spencer's arraignment on the original information on January 3, 1985, an arraignment  
13 handled not by me but by Mr. Foister, another Clark County deputy prosecuting attorney, the  
14 agreed discovery order noted that there would be a hearing for a continuance of the February trial  
15 date. Dkt 69 at 15. This meant that an agreement between defense counsel and the prosecutor  
16 had been reached that the case would not proceed to trial as originally scheduled on February 27,  
17 1985. Mr. Spencer signed a waiver of speedy trial on January 25, 1985. Exhibit C hereto.  
18

19 In late February 1985, Mr. Spencer's stepson, Matthew Hansen, made disclosures  
20 concerning alleged abuse by Mr. Spencer that were documented in police reports prepared by  
21 Detective Sharon Krause. After reviewing the matter with Ms. Linde or her supervisor in King  
22 County and Mr. Curtis, and with their approval, on February 28, 1985 I filed an Amended  
23 Information incorporating the original charges Mr. Curtis had filed and added three new counts  
24 naming Matthew Hansen as the victim. Exhibit 26 to Curtis Deposition excerpted as Exhibit C to  
25  
26

1 Fetterly Declaration. The trial was scheduled for April 15. Exhibit D hereto. However, that date  
2 was later stricken and re-set to May 20.

3 Records from the Prosecuting Attorney's file indicate that after the April 15 trial date was  
4 stricken, the Court directed Mr. Curtis to get together with Mr. Rulli and see if another trial date  
5 could be agreed on with outside counsel (referring to Ms. Linde). See Exhibit E hereto.  
6

7 Records from the Prosecuting Attorney's file also indicate that on April 4, 1985, Mr.  
8 Curtis had a telephone conversation with Ms. Linde in which she stated that a trial in late May or  
9 the first week of June was not good for her due to her involvement in a first degree murder trial  
10 scheduled for trial at the same time. See Exhibits 28-29 to Curtis Deposition excerpted as Exhibit  
11 C to Fetterly Declaration.

12 The Clark County Prosecuting Attorney's Office formerly took the Spencer case back  
13 from the King County Prosecutor's Office in late April 1985. I became actively involved in the  
14 prosecution from that point. My first actions were to review the reports of Detective Sharon  
15 Krause concerning her interviews with Matthew Hansen on March 7 and March 21, 1985, and  
16 with Matthew Spencer and Kathryn Spencer on March 25, 1985.  
17

18 Based on those reports, which documented new disclosures by the three children, I  
19 prepared a Second Amended Information, incorporating the previous charges and adding Counts  
20 VI through XVI. This Second Amended Information was filed on May 3, 1985. See Exhibit 6 to  
21 Freimund Declaration (Dkt 63-6)  
22

23 On this same date, May 3, 1985, the parties appeared in court before Judge Lodge. Mr.  
24 Rulli stated on the record that he had not yet had an opportunity to review the new charges  
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1 contained in the Seconded Amended Information with Mr. Spencer, and asked for more time to  
2 respond to the new charges. The matter was set over to May 10 for arraignment. Exhibit 8 to  
3 Freimund Declaration (Dkt 63-8 at 5-9).

4 Also at the May 3, hearing, Mr. Rulli stated that he needed time to interview the child  
5 victims. Mr. Rulli said, "That doesn't give me ample opportunity for me to interview them  
6 because we have a May 20<sup>th</sup> date set now, which doesn't give me a lot of time. I have got other  
7 trials set between that date and today." Exhibit 8 to Freimund Declaration (Dkt 63-8 at 7).

8 Mr. Rulli and I traveled to California where he interviewed the two Spencer children and  
9 their counselors on May 9, 1985.

10 The following day, May 10, 1985, the parties were back in court where Mr. Spencer  
11 formally entered a plea of not guilty to the charges contained in the Second Amended  
12 Information. See Exhibit F hereto. On this same date, I filed Notice of Intent to use Statements  
13 Pursuant to RCW 9A.44.120, the child hearsay statute. See Exhibit G hereto. This was 10 days  
14 before the previously scheduled trial date of May 20, 1985.

15 Concerning the May 20 trial date, there is no way with the case in its current state, where  
16 Mr. Spencer had just been arraigned on May 10 on eleven new charges, some of them involving a  
17 new victim (Matthew Spencer), that the case could have proceeded to trial on May 20, 1985.  
18 Under these circumstances, where trial preparation by both parties was just in the beginning  
19 stages, and Mr. Rulli had other trials scheduled between May 3 and May 20, a continuance would  
20 have been asked for and agreed to.

21 Because the parties were aware the trial date would need to be continued, neither the  
22 defense nor the state had filed the discovery documents required by the Omnibus Order, although  
23

1 the state had previously provided a great deal of discovery to the defense. Any mandatory  
2 reciprocal discovery, including witness statements, reports of expert witnesses, etc., would not  
3 have to be produced until 10 days before the new trial date, which had not been scheduled.

4 To my great surprise, early the next week, Mr. Rulli advised me that his client wished to  
5 change his plea to guilty to the majority of the charges. We had discussions about dismissing  
6 certain counts and then contacted the court to arrange a date for the change of plea hearing. Mr.  
7 Spencer's guilty plea was accepted by Judge Lodge in open court on May 16, 1985. See Exhibit 8  
8 to Freimund Declaration (Dkt 63-8 at 10-48).

9 At the time that I interviewed Kathryn Spencer on December 11, 1984, no decision had  
10 been made concerning whether charges would be filed. At that time, I concurred with Rebecca  
11 Roe that the case should be declined due to proof problems, but the ultimate decision concerning  
12 whether charges would be filed was to be made by the Arthur Curtis as the record now clearly  
13 reflects.

14 Because Mr. Spencer was then employed as a Vancouver Police Officer, Mr. Curtis took  
15 an active role in the Spencer case and had to approve all major decisions. At his request I  
16 interviewed Kathryn to provide an opinion concerning her competence to testify. This is the only  
17 time I recall formally interviewing a child victim prior to charges being filed. This was because  
18 this is the only case I recall where Mr. Curtis asked me for an opinion concerning the competence  
19 of a child witness prior to making a charging decision. I commonly interviewed a child victim  
20 close to the trial date to prepare for trial, something that often wasn't necessary because most  
21 cases settled. The Spencer case was also different in this regard because Kathryn lived out of  
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1 state and I might not have an opportunity to see her again until just before trial, if charges were  
2 filed and the case proceeded to trial.

3 My deposition testimony taken in the 1996 habeas corpus proceeding as cited by  
4 plaintiff's counsel in her response to my earlier summary judgment motion (Dkt 78 at 7 which  
5 cited Dkt 73-1 at 21) was taken out of context. I did testify that it was not my normal practice to  
6 interview child molestation victims until the case was ready for trial. This statement was and is  
7 still correct. (Dkt 78 at 7 citing Dkt. 73-1 at 21). My response concerning my normal practice  
8 was directed to the question of whether or not I had ever interviewed Matt Hansen. (Dkt 73-1 at  
9 21 L. 5). I replied that I didn't believe so, and I do not believe that I ever did interview Matt  
10 Hansen.  
11

12 In my 1996 deposition, I was asked whether I was ever involved in an interview with  
13 Kathryn. I answered that I believe I was, in the presence of a defense attorney in Sacramento.  
14 (Dkt 73-1 at 20). I was not asked in the deposition if I had interviewed Kathryn on any other  
15 occasion. (Dkt 73-1 at 20). I didn't volunteer information about the December 11, 1984  
16 interview because I was not asked specifically about it and had not remembered it.  
17

18 During my testimony before Judge Bryan in 1996, I was asked, "during the pendency of  
19 the Spencer case, did you involve yourself in the interviews of any of the three victims?" I  
20 responded that, "I recall being present at interviews of two of the children in Sacramento,  
21 California. Those were the defense attorney's interviews." (Dkt 73-1 at 26).  
22

23 When I was testified in 1996, I simply had not remembered that I had interviewed  
24 Kathryn nearly 12 years earlier on December 11, 1984. My testimony in the 1996 habeas corpus  
25 proceeding was focused on whether the prosecutor had received a copy of Kathryn's medical  
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1 report in 1984 or 1985. In reviewing the prosecutor's file to prepare for that deposition, I was  
2 looking for the medical report, and nothing else. As I reviewed the file in 1996 to prepare for my  
3 deposition, nothing in the file made me recall that I had interviewed Kathryn many years earlier.

4 Signed under penalty of perjury of the laws of the State of Washington this 16 day of  
5 January 2013, at Boise, Idaho.  
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8 JAMES M. PETERS  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of January, 2013, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Plaintiffs attorney:

[dandavies@dwt.com](mailto:dandavies@dwt.com)  
[kathleen.zellner@gmail.com](mailto:kathleen.zellner@gmail.com)  
[dhjohnson43@aol.com](mailto:dhjohnson43@aol.com)

AND TO

**Attorney for Co-Defendants Krause, Clark Co. Sheriff's Office, Clark Co. Prosecutor's Office:**

[Bernard.veljacic@clark.wa.gov](mailto:Bernard.veljacic@clark.wa.gov)  
[gbogdanovich@lldkb.com](mailto:gbogdanovich@lldkb.com)  
[jefff@fjtlaw.com](mailto:jefff@fjtlaw.com)

**Attorney for Co-Defendant Spencer:**

[dunnwh@pacifier.com](mailto:dunnwh@pacifier.com)  
[western@wscd.com](mailto:western@wscd.com)

By: s/Patricia C. Fetterly  
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Assistant Attorney General  
DANIEL J. JUDGE, WSBA No. 17392  
Senior Counsel  
Attorney General's Office  
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Olympia, WA 98504-0116  
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Fax: (360) 586-6655  
E-mail: [PatriciaF1@atg.wa.gov](mailto:PatriciaF1@atg.wa.gov)  
Attorneys for Defendant



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, )  
Plaintiff, ) NO. 85-1-00007-2  
vs. )  
CLYDE RAY SPENCER ) PLEA  
Defendant. )

THIS CAUSE coming on in open Court this 4th  
day of January, 1985, for the Defendant to  
plead to the information filed herein, the State of  
Washington being represented by M. Roister, Deputy  
Prosecuting Attorney, and the Defendant being present in  
Court with his/her attorney J. P. [unclear]  
and it being demanded of the Defendant whether he is  
guilty or not guilty of the matters set forth in the  
information, the Defendant pleads NOT GUILTY to each count  
in the information.

DONE IN OPEN COURT this 4th day of

January, 1985.

[Signature]  
JUDGE OF THE SUPERIOR COURT

PLEA - 1

FILED

JAN 4 1985

George J. Miller, Clerk, Clark Co.

CLARK COUNTY PROSECUTING ATTORNEY  
1300 PRAIRIE  
P. O. BOX 1000  
VANCOUVER, WASHINGTON 98661  
(206) 525-3201

EXHIBIT

A

9

Spencer-00018



46

SUPERIOR COURT - CLARK COUNTY, WASH.

NO. 86-1-00007-2

**ASSIGNMENT FOR TRIAL**

*Trials start at 9:00 AM unless noted otherwise*

PLAINTIFFS State of Washington

Prosecuting Attorney ☐

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Versus

DEFENDANTS Clyde Ray Spencer

J. Bulli ☐

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JURY ☐ NON-JURY ☐

JUDGE DEPT. 3 - JUDGE LODGE

TRIAL DATES ☐ priority 2-27-85

OR ☐ priority

TRIAL DATES **FILED**

JAN 4 1985

George J. Miller, Clerk, Clark Co.

CLERK Brown

Date of Arraignment 1-9-85

Date for Pretrial Hearing 53

Date for Continuation Hearing 1-25-85

1-30-85

Clerk of the Superior Court  
P. O. Box 20000  
Vancouver, Wash. 98663

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5x10

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EXHIBIT B

Spencer-00020

## IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

## IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

PLAINTIFF,

vs.

CLYDE RAY SPENCER,

Defendant.

ND. 85-00007-2

WAIVER OF SPEEDY TRIAL

I have been informed and understand that I have the following rights:

1. The right to trial within sixty (60) days following the day of arraignment if I am incarcerated.
2. The right to trial within ninety (90) days following the day of arraignment if I am not incarcerated.
3. The constitutional right to a speedy trial.

I have been informed and understand that if I do not receive a trial within the time limits set out above, the case against me will be dismissed and cannot ever be filed again. Knowing all of the above, I hereby waive (give up) the right to trial within 90 days and the constitutional right to speedy trial.

DATED this 25 day of January, 1985

Clyde Ray Spencer  
Defendant

James E. Lulli  
Defense Attorney

APPROVED:

James M. Petay  
Deputy Prosecuting Attorney

## FINDINGS AND ORDER

I have questioned the defendant and find that (1) he intelligently, knowingly and voluntarily waived the above rights to speedy trial, and (2) that he was competent to make such waiver.

Done in OPEN COURT and in the presence of the defendant this 25 day of January, 1985.

James M. Petay  
Judge of the Superior Court

WAIVER OF SPEEDY TRIAL

JAN 26 1985

George J. Miller, Clerk, Clark Co.

EXHIBIT

Spencer-00029



SUPERIOR COURT - CLARK COUNTY, WASH.

NO. 85-F-00007-2

ASSIGNMENT FOR TRIAL

Trial start at 9:00 AM unless noted otherwise.

PLAINTIFFS State of Washington

Prosecuting Attorney ☒

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versus

DEFENDANTS Clyde Ray Spencer

J. Rullo ☐

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JURY ☒ NON-JURY ☐

JUDGE DEPT. 3 JUDGE LODGE

☐ Priority

TRIAL DATES 4-15-85

☐ Priority

**FILED**

JAN 25 1985

CLERK OF THE SUPERIOR COURT

(Name)

Date of Assignment \_\_\_\_\_

Days elapsed \_\_\_\_\_

Date for Omnibus Hearing \_\_\_\_\_

Clerk of the Superior Court  
D. Box 1000  
Tacoma, WA 98401-1000

EXHIBIT D

Spencer-00030

RP: Spencer

Art:

The trial date of April 15, 1985  
was struck, you are to get with  
Rulli and see when another date  
can be agreed or with the outside  
counsel. The court held off or an  
expert due to the "Stines rule" or  
pre-plan/conviction evaluations.

Davis

EXHIBIT E



1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3  
4 STATE OF WASHINGTON, )

5 Plaintiff, ) NO. 95-1-00007-2

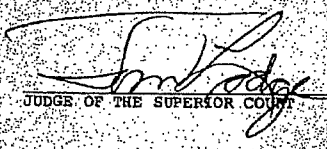
6 vs. )

7 Clyde Roy Spencer ) PLEA

8 Defendant. )

9  
10 THIS CAUSE coming on in open Court this 10  
11 day of May, 1985, for the Defendant to  
12 plead to the information filed herein, the State of  
13 Washington being represented by James M. Peters, Deputy  
14 Prosecuting Attorney, and the Defendant being present in  
15 Court with his ~~her~~ attorney James Rull  
16 and it being demanded of the Defendant whether he is  
17 guilty or not guilty of the matters set forth in the  
18 information, the Defendant pleads NOT GUILTY to each count  
19 in the information.  
20

21 DONE IN OPEN COURT this 10 day of  
22 May, 1985.

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25 JUDGE OF THE SUPERIOR COURT  
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PLEA - 1

George J. Miller, Clerk, Clark Co.

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN  
P. O. BOX 1830  
VANCOUVER, WASHINGTON 98602  
(206) 455-8811

EXHIBIT

14

Spencer-00063

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, )  
Plaintiff, ) No. 85-1-00007-2  
vs. )  
CLYDE RAY SPENCER, ) NOTICE OF INTENT TO USE  
Defendant. ) STATEMENTS PURSUANT TO  
RCW 9A.44.120

TO: CLYDE RAY SPENCER, THE ABOVE NAMED DEFENDANT AND  
TO YOUR ATTORNEY: JAMES RULLI

Comes now Arthur D. Curtis, Prosecuting Attorney for  
Clark County, by and through James M. Peters, Deputy Prosecuting  
and does give notice to the defendant named herein, and his  
counsel, James Rulli, of intent to use the out of court  
statements of Kathryn Spencer, age 6, and Mathew Hansen, age  
five, pursuant to RCW 9A.44.120. Said statements are set  
forth in the police reports, specifically interviews between  
Sharon Krause, Shirley Spencer, and Deanne Spencer, copies of  
which have been provided to the defendant and his attorney.  
Further specifics, if needed, will be provided on request.

DATED this 10 day of May, 1985.

*James M. Peters*  
James M. Peters  
Deputy Prosecuting Attorney

Service accepted and receipt of  
true copy acknowledged this  
10 day of May, 1985.

*James Rulli*  
Attorney for Defendant

**FILED**

MAY 10 1985

George J. Miller, Clerk, Clark Co.

NOTICE - 1

CLARK COUNTY PROSECUTING ATTORNEY  
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P. O. BOX 5960  
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